

FILED
CHARLOTTE, NC

OCT 12 2010

**U.S. DISTRICT COURT
WESTERN DISTRICT OF NC**

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA

Huni Sen Hotep Ali)	Case No: 3:10CV357
Washitaw de Dugdahmoundyah Muur's)	
<i>In Propria Persona</i>)	MOTION FOR JUDGE TO UPHOLD JUDICIAL
Counter-Claim Plaintiff)	NOTICE AND DISMISS MAGISTRATE JUDGE
)	RECOMMENDATION
Vs.)	
BANK OF AMERICA)	
BROCK & SCOTT PLLC)	
)	
)	
)	DEMAND GRAND JURY TRIAL
)	
)	
<u>Counter-Claim Defendant</u>)	

COME NOW We the People either in plural or in singular capacity. In singular capacity, in this case, it is Huni Sen Hotep Ali Washitaw de Dugdahmoundyah Muur's Indigenous People, one of the people as contemplated in the preambles of the Constitution for North Carolina, the Constitution for the State of North Carolina, and the 1789 Constitution for the United States of America. **For the Record**, I Huni Sen Hotep Ali am not a 14th Amendment Citizen, nor am I US Citizen or a US Corporation;

JUDICIAL COGNIZANCE

This court takes judicial cognizance and decrees as follows:

1. **JUDICIAL COGNIZANCE**- Judicial notice, or knowledge upon which a judge is bound to act without having it proved in evidence. [Black's Law Dictionary, 5th Edition]
2. **COURT**. The person and suit of the sovereign; the place where the sovereign sojourns with his regal retinue, wherever that may be. [Black's Law Dictionary, 5th Edition, page 318.]
3. **COURT**. An agency of the sovereign created by it directly or indirectly under its authority, consisting of one or more officers, established and maintained for the purpose of hearing and determining issues of law and fact regarding legal rights and alleged violations thereof, and of applying the sanctions of the law, authorized to exercise its powers in the course of law at times and places previously determined by lawful authority. [Isbill v. Stovall, Tex.Civ.App., 92 S.W.2d 1067, 1070; Black's Law Dictionary, 4th Edition, page 425]
4. **COURT OF RECORD**. To be a court of record a court must have four characteristics, and may have a fifth. They are:
 - A. A judicial tribunal having attributes and exercising functions independently of the person of the magistrate designated generally to hold it [Jones v. Jones, 188 Mo.App. 220, 175 S.W. 227, 229; Ex parte Gladhill, 8 Metc. Mass., 171, per Shaw, C.J. See, also, Ledwith v. Rosalsky, 244 N.Y. 406, 155 N.E. 688, 689][Black's Law Dictionary, 4th Ed., 425, 426]
 - B. Proceeding according to the course of common law [Jones v. Jones, 188 Mo.App. 220, 175 S.W. 227, 229; Ex parte Gladhill, 8 Metc. Mass., 171, per Shaw, C.J. See, also, Ledwith v. Rosalsky, 244 N.Y. 406, 155 N.E. 688, 689][Black's Law Dictionary, 4th Ed., 425, 426]

C. Its acts and judicial proceedings are enrolled, or recorded, for a perpetual memory and testimony. [3 Bl. Comm. 24; 3 Steph. Comm. 383; The Thomas Fletcher, C.C.Ga., 24 F. 481; Ex parte Thistleton, 52 Cal 225; Erwin v. U.S., D.C.Ga., 37 F. 488, 2 L.R.A. 229; Heininger v. Davis, 96 Ohio St. 205, 117 N.E. 229, 231]

D. Has power to fine or imprison for contempt. [3 Bl. Comm. 24; 3 Steph. Comm. 383; The Thomas Fletcher, C.C.Ga., 24 F. 481; Ex parte Thistleton, 52 Cal 225; Erwin v. U.S., D.C.Ga., 37 F. 488, 2 L.R.A. 229; Heininger v. Davis, 96 Ohio St. 205, 117 N.E. 229, 231.][Black's Law Dictionary, 4th Ed., 425, 426]

E. Generally possesses a seal. [3 Bl. Comm. 24; 3 Steph. Comm. 383; The Thomas Fletcher, C.C.Ga., 24 F. 481; Ex parte Thistleton, 52 Cal 225; Erwin v. U.S., D.C.Ga., 37 F. 488, 2 L.R.A. 229; Heininger v. Davis, 96 Ohio St. 205, 117 N.E. 229, 231.][Black's Law Dictionary, 4th Ed., 425, 426]

5. **28 USC 1446(d)** Promptly after the filing of such notice of removal of a civil action the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the notice with the clerk of such State court, which **shall effect** the removal and the State court shall proceed no further unless and until the case is remanded.
6. **EFFECT v.-** To do; to produce; accomplish. *Black's Law Dictionary sixth edition*
7. **28 USC § 1441(d) and (e)-** (d) Any civil action brought in a State court against a **foreign state** as defined in section 1603 (a) of this title may be removed by the foreign state to the district court of the United States for the district and division embracing the place where such action is pending. Upon removal the action shall be tried by the court without jury. Where removal is based upon this subsection, the time limitations of **section 1446 (b) of this chapter may be enlarged at any time for cause shown.**
(e); (1) Notwithstanding the provisions of subsection (b) of this section, a defendant in a civil action in a State court may remove the action to the district court of the United States for the district and division embracing the place where the action is pending if—
(A) the action could have been brought in a United States district court under section 1369 of this title; or
(B) the defendant is a party to an action which is or could have been brought, in whole or in part, under section 1369 in a United States district court and arises from the same accident as the action in State court, even if the action to be removed could not have been brought in a district court as an original matter.
The removal of an action under this subsection shall be made in accordance with

section 1446 of this title, except that a notice of removal may also be filed before trial of the action in State court within 30 days after the date on which the defendant first becomes a party to an action under section 1369 in a United States district court that arises from the same accident as the action in State court, or at a later time with leave of the district court.

8. **28USC 1603(a) and (b)-** (a) A “foreign state”, except as used in section 1608 of this title, includes a political subdivision of a foreign state or an agency or instrumentality of a foreign state as defined in subsection (b).

(b) An “agency or instrumentality of a foreign state” means any entity—

(1) which is a separate legal person, corporate or otherwise, and

(2) which is an organ of a foreign state or political subdivision thereof, or a majority of whose shares or other ownership interest is owned by a foreign state or political subdivision thereof, and

(3) which is neither a citizen of a State of the United States as defined in section 1332 (c) and (e) of this title, nor created under the laws of any third country.

9. **28 USC 1332 (c) and (e)-** (c) For the purposes of this section and section 1441 of this title—(1) a corporation shall be deemed to be a citizen of any State by which it has been incorporated and of the State where it has its principal place of business, except that in any direct action against the insurer of a policy or contract of liability insurance, whether incorporated or unincorporated, to which action the insured is not joined as a party-defendant, such insurer shall be deemed a citizen of the State of which the insured is a citizen, as well as of any State by which the insurer has been incorporated and of the State where it has its principal place of business; and

(2) the legal representative of the estate of a decedent shall be deemed to be a citizen only of the same State as the decedent, and the legal representative of an infant or incompetent shall be deemed to be a citizen only of the same State as the infant or incompetent.

(e) The word “States”, as used in this section, includes the Territories, the District of Columbia, and the Commonwealth of Puerto Rico.

10. **Title 18 USC § 1001-** Statements or entries generally(a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully-

(1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;

- (2) makes any materially false, fictitious, or fraudulent statement or representation; or
- (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry; shall be fined under this title.

11. 28 USC 636(c)- (c) Notwithstanding any provision of law to the contrary—

(1) Upon the consent of the parties, a full-time United States magistrate judge or a part-time United States magistrate judge who serves as a full-time judicial officer may conduct any or all proceedings in a jury or nonjury civil matter and order the entry of judgment in the case, when specially designated to exercise such jurisdiction by the district court or courts he serves. Upon the consent of the parties, pursuant to their specific written request, any other part-time magistrate judge may exercise such jurisdiction, if such magistrate judge meets the bar membership requirements set forth in section 631 (b)(1) and the chief judge of the district court certifies that a full-time magistrate judge is not reasonably available in accordance with guidelines established by the judicial council of the circuit. When there is more than one judge of a district court, designation under this paragraph shall be by the concurrence of a majority of all the judges of such district court, and when there is no such concurrence, then by the chief judge.

(2) If a magistrate judge is designated to exercise civil jurisdiction under paragraph (1) of this subsection, the clerk of court shall, at the time the action is filed, notify the parties of the availability of a magistrate judge to exercise such jurisdiction. The decision of the parties shall be communicated to the clerk of court. Thereafter, either the district court judge or the magistrate judge may again advise the parties of the availability of the magistrate judge, but in so doing, shall also advise the parties that they are free to withhold consent without adverse substantive consequences. Rules of court for the reference of civil matters to magistrate judges shall include procedures to protect the voluntariness of the parties' consent.

12. Title 28 Part III Ch. 43§636- (b)

1. Notwithstanding any provision of law (Constitution) to the contrary—

A. a judge may designate a magistrate judge to hear and determine any pretrial matter pending before the court, except a motion for injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss or quash an indictment or information made by the defendant, to suppress evidence in a criminal case, to dismiss or to permit maintenance of a class action, to dismiss for failure to state a claim upon which relief can be granted, and to involuntarily dismiss an action. A judge of the court may reconsider any pretrial matter under this subparagraph (A) where it

has been shown that the magistrate judge's order is clearly erroneous or contrary to law.

By what authority/law magistrate judge David C Keesler is usurpation to deny rights, Now pursuant to 18 USC 1001 whoever, in any matter within the jurisdiction knowingly and willfully falsifies, conceals, or makes any materially false, fraudulent statement and/or uses any false writing or document knowing the same to contain any materially false or fraudulent statement or entry shall be fined;

Therefore with that been stated the record will show that Magistrate Judge David C Keesler prejudice the court with his Recommendation which he was not given the authority to reside over this case, thereby his Recommendation is null and void, but for the sake of justice, fairness to the parties and to undo the prejudice that has been set forth by Magistrate Judge David C Keesler, I will respond; and

Maxims of Law states, **Courts are for the people to command the power of the State.**

CANON 2: A JUDGE SHOULD AVOID IMPROPRIETY AND THE APPEARANCE

1. Magistrate Judge David C Keesler stated: *"This matter has been referred to the undersigned Magistrate Judge pursuant to 28 USC 636(b),.."*
2. By Magistrate Judge David C Keesler own admission and submission he is bound by the United States Code 28; wherefore, pursuant to 28 USC 636(c) states magistrate judge can **only** reside over a case if the parties consented (see Judicial Cognizance) as of this date no consent by either party has been submitted, nor is there a written consent and I Huni Sen Hotep Ali never implied as well; and
3. Further, Magistrate Judge David C Keesler goes on to state: *" 28 USC 1446 outlines the procedure for removal to federal court and provides in pertinent*

part”; here again the magistrate judge is misleading the court, but by his own words, states that 28 USC 1446 outlines the procedure, therefore by 28 USC 1446 states (d) *shall file a copy of the notice with the clerk of such State court, which shall effect the removal..* Meaning the State clerk of court is responsible for moving the case to federal court (see Judicial Cognizance); and

4. Therefore, the Clerk of court for the State has committed fraud as well as Obstruction of Justice, which now the Magistrate Judge David C Keesler is aiding and abetting in committing this obstruction of justice, thereby committing RICO; and
5. Therefore, as I stated in Document number 13, that I relied on the directions of Clerk of Court for the State, that this case would be transfer by them. Now even if this was not the case, pursuant to 28 USC 1441(d) and (e), which I am consider a foreign state, I Huni Sen Hotep Ali still had additional time to remove this case to federal, which was clearly stated in my document filed August 4, 2010; and
6. The Court must stand for the principle that “no one is above the true law”. If this is not the case, then “We the People,” do no have a judicial system as envisioned and implemented in Article III of the Constitution of the United States. Magistrate Judge David C Keesler cannot, and should not be treated differently than anyone else who deceives the court. He is thus unfit to remain a member of any court and should be removed from further representation. The issue of Rights of Indigenous People (Muur’s) and the lives which it takes and affects, is too important than to allow a member of the judicial system to pervert the Treaty Laws of Constitution, Banking Act and United Nations Declaration on the Rights of Indigenous People

adopted 13 September 2007. And, even were this a lesser matter, there can be no excuse for deceiving the court, much more depriving Indigenous People due process and their day in court.

Therefore, Magistrate Judge Keesler reference(s) about case laws, failure to file in a timely matter, and notice of appeal right and other is moot. This is a direct abuse of due process with the intent to deprive of rights.

Therefore, for the facts and laws stated above, We the People Huni Sen Hotep Ali move this court to uphold the Judicial Cognizance and dismiss Magistrate Judge David C Keesler recommendation for lack of authority/law and failure to quote code as it is written, which is misleading the Court and abuse of process. Whereby, judge Robert J Conrad Jr you are to uphold the Judicial Cognizance and remove magistrate judge David C Keesler and continue with this case for Discovery as well as trial date to be set.

Date 10/12/2010

By: Huni Sen Hotep Ali
Huni Sen Hotep Ali

CERTIFICATE OF SERVICE

I hereby declare under penalty of perjury under the laws of the Most High, on October 12, 2010,
a true and correct copy of the foregoing document or correspondence entitled

MOTION TO UPHOLD JUDICIAL COGNIZANCE

was delivered via United States mail, to all interested parties at the following address:

Attorney John T. Benjamin
1115 Hillsborough St
Raleigh NC 27603
NC Bar No. 18673

By: 
Huni Sen Hotep Ali